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IN THE

Supreme Court of the United States

AMANDA SPIES BORNHORST AND TUSCARAWAS COUNTY,

Petitioners,

v.

ANTHONY HARRIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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INTRODUCTION

A writ of certiorari should not issue in this case. The petition presents no conflict between the circuits, no important federal question unsettled by this Court or that conflicts with a decision by a state court of last resort, and no decision so far departing from the accepted and usual course of judicial proceedings that it calls for exercise of this Court's supervisory power. The Sixth Circuit's opinion broke no new ground. Rather, it straightforwardly applied well-settled law to the facts of this case.

The petitioners argue that the Sixth Circuit made erroneous factual findings and misapplied the law. But this is not a sufficient rationale for the exercise of this Court's discretionary jurisdiction. And the petitioners' critiques of the decision are incorrect in any event.

Moreover, this case will proceed to the jury regardless of whether this Court exercises its discretion to hear the matter. While the petitioners challenge Anthony Harris's § 1983 claim against Amanda Spies on absolute and qualified immunity grounds, they do not challenge the viability of that same claim against petitioner Tuscarawas County, which has no immunity. Nor do they challenge the Sixth Circuit's reversal of summary judgment on most of the other causes of action, including claims for First-Amendment retaliation, defamation, malicious prosecution, and tortious interference. Accordingly, this Court should decline to hear this case.

STATEMENT OF THE CASE

The petitioners present a misleading portrait of the facts considered by the Sixth Circuit in reversing the district court's grant of summary judgment.

When he was twelve years old, Anthony Harris – a well-behaved child with no record of criminal behavior or prior experience with law enforcement whatsoever – was subjected to a coercive interrogation, arrested for and convicted of the murder of his five-year-old neighbor, and incarcerated for nearly two years, all for a crime he did not commit.

Petitioner Amanda Spies, the elected chief prosecutor of Tuscarawas County, Ohio, ordered police officers – over their objection – to arrest twelve-year-old Anthony for the murder of Devan Duniver. Spies did so based solely upon a "confession" that had been extracted from Anthony by police officers – a "confession" that was so coercive and so facially untrustworthy that, as the Sixth Circuit held, no reasonable officer could have possibly relied upon it in making a probable cause determination. In stepping outside her prosecutorial role to order Anthony's arrest, Spies lost her right to absolute immunity. And in ordering his arrest when no reasonable officer could have concluded that probable cause existed, she lost her right to summary judgment based on qualified immunity.

Spies's misconduct did not end with Anthony's unlawful arrest. Spies prepared a false search warrant for Anthony's home. She withheld critical *Brady* evidence from the juvenile court and from Anthony

about other suspects – suspects who, unlike Anthony, had the opportunity and the motive to commit the crime. When Anthony's conviction was overturned and he was finally released from custody, Spies held a press conference in her official capacity and announced – without any evidence – that Anthony had committed the murder. And when Anthony applied to enlist in the Marine Corps, Spies convinced the Marines not to take him, falsely telling Marine recruiters that Anthony would always be a suspect in Devan Duniver's murder, that Anthony had confessed in writing, and that there were no other suspects for the crime. In fact, Anthony would never be recharged.

Despite Spies's multi-year vendetta against Anthony, this young man has survived. He succeeded in his second attempt to join the Marine Corps, and recently returned from a tour of duty in Iraq. At the same time, Anthony rightly seeks redress for Spies's misconduct. The Sixth Circuit properly held that he raised genuine issues of material fact warranting the denial of summary judgment to Spies and Tuscarawas County.

A. The Underlying Allegations

1. The Investigation

On Saturday, June 27, 1998, at 2 p.m., Anthony Harris walked home from a friend's house. After walking through a small wooded area, a familiar neighborhood shortcut, he saw his neighbor Lori Duniver. Ms. Duniver was looking for her five-year-old daughter Devan, who had been missing for about fifteen minutes. For the next

few hours, Anthony helped Ms. Duniver look for Devan. That night, several hundred people joined the search. At 2:30 the next afternoon, Devan's body was found in the small wooded area behind her home. She had been stabbed seven times in the neck with enough force to impact a vertebra in her neck. Her carotid artery had been severed.[1]

Jeffrey Urban, then a captain in New Philadelphia's police department, handled the investigation. Amanda Spies, the chief prosecutor for Tuscarawas County, assigned herself to the case. There were several suspects, but Urban and Spies focused only on twelve-year-old Anthony, who was one of the few African-American children in the county.[2] There was no physical evidence linking Anthony to the gruesome murder, and there never would be.

Spies's theory was that Anthony happened to encounter Devan in the woods between 1:45 and 2 p.m. on June 27, and spontaneously decided to stab her seven times in the neck (with a knife he just happened to be carrying at the time), somehow without getting any evidence of the crime on his clothes. A necessary element of Spies's theory was that Devan was killed during that time, for Anthony's only opportunity to commit the crime was in the woods between 1:45 and 2 pm.

On July 1, 1998, Spies helped Urban obtain a warrant to search Anthony's home. Spies prepared an

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[1] *Harris v. Bornhorst*, 513 F.3d 503, 507 n.8 (6th Cir. 2008).

[2] *Id.* at 507 (discussing numerous "persons of interest").

affidavit for Urban stating that Anthony had walked through the woods at 2 p.m. and that "[t]he preliminary report from Dr. Murthy [the coroner] indicates that the child, Devan Duniver, died at approximately 2:00 PM."

But the affidavit prepared by Spies was false. Dr. Murthy had not determined that Devan died at 2 p.m. on June 27, 1998. He could not fix any time of death at all within the 25-hour period during which Devan was missing. Spies knew this, because she met with Dr. Murthy at the crime scene one day before she prepared the false affidavit. Spies advised Urban to try to obtain consent to search the Harris home to avoid having the defective warrant later subjected to scrutiny.

On July 2, 1998, Urban went to the Harris home and asked Cyndi Harris, Anthony's mother, if her sons would review photographs at the station. Ms. Harris agreed and went inside to get her car keys, emerging just in time to watch Urban drive away with Anthony. As soon as he had Anthony alone in the car, Urban turned on his tape recorder and illegally interrogated him, but was unable to obtain any incriminating statements.[3]

Ms. Harris rushed to the station to retrieve her son. Following Spies's advice, Urban then cajoled Ms. Harris into consenting to a search of her home, thereby avoiding having to use the false warrant Spies had prepared. The search of Anthony's home produced no evidence linking Anthony to the crime. Urban seized the shorts and T-shirt Anthony had worn on June 27,

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[3] *In re Harris*, 2000 WL 748087, at *16-18 (Ohio 5th App. Dist. 2000).

but forensic analysis revealed none of Devan's blood or DNA on Anthony's clothes.

2. The Coerced Confession

Undeterred, Spies directed the police to give Anthony a computerized voice stress test, although she had no idea whether it was appropriate to use a voice stress test on a child. Urban contacted Millersburg police chief Thomas Vaughn. Vaughn was trained to administer voice stress tests, as well as to use the aggressive "Reid" and "Glen Foster" interrogation techniques.

On July 15, 1998, with Spies's knowledge, Urban summoned Ms. Harris to bring Anthony and his brother Michael to the station to be given voice stress tests. Vaughn and Urban assured Ms. Harris that testing protocol required that Anthony not be interrogated, but rather be given a "relaxing interview." Ms. Harris asked to be present, but she was ushered into an adjoining room where she could see, but not hear, what Vaughn was doing to her son.[4]

Alone with Anthony, Vaughn closed the door, turned on his tape recorder, and launched into a relentless, manipulative and coercive interrogation of this young boy.[5] Anthony attempted to give Vaughn the answers

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[4] *Harris*, 513 F.3d at 507-08.

[5] The Ohio Court of Appeals, the district court, and the Sixth Circuit all found the interrogation to have been (Cont'd)

he demanded, but his answers only demonstrated he was unfamiliar with details of the crime that the perpetrator would have known.[6] Vaughn made a series of guesses – that Devan had run from Anthony in the woods, that Anthony had caught her and then stabbed her in the throat with a pocket knife – and, under intensively coercive questioning, Anthony broke down and said "yes." But the answers he gave were at odds with known details of the crime.[7] For example, Anthony stated that he did not know how many times he had stabbed Devan; after Vaughn suggested that it was "[o]nce or twice," Anthony said, "Probably twice." But Devan had been stabbed seven times.[8]

Finally, when Vaughn asked him to write out his "confession," Anthony asked for his mother. When she entered the room, Anthony immediately recanted his "confession." During several minutes of pointed questioning from his mother, Anthony steadfastly maintained his innocence.[9]

(Cont'd)

unconstitutionally coercive. *In re Harris*, 2000 WL 748087 at *15; *Harris v. Bornhorst*, No. 5:03CV1827 (N.D. Ohio Aug. 13, 2004) (order denying motions for judgment on the pleadings); *Harris*, 513 F.3d at 512.

[6] *Harris*, 513 F.3d at 512.

[7] *Id.*

[8] *Id.* at 512-13.

[9] *Id.* at 513.

3. Spies Orders Anthony's Arrest

When the interrogation was over, Urban telephoned Spies and asked her to come to the police station. Upon her arrival, Spies listened to the tape recording Vaughn had made of the interrogation.[10] Given the untrustworthiness of the "confession," Vaughn told Spies he did not believe Anthony should be arrested at that time, and that further investigation was imperative. He implored Spies to let Anthony go home with his mother. Spies rejected this advice. Urban also believed Anthony should not be arrested that day but, cowed by Spies's reaction to Vaughn, said nothing.

Spies did not ask why Anthony had not been given the voice stress test she had requested. She did not ask why Anthony had been separated from his mother. She did not ask Urban or Vaughn a single question regarding the clearly coercive nature of the "confession." And she was wholly unconcerned by the untrustworthiness of the statements Vaughn had coerced from Anthony, even though the "incriminating" details provided by Anthony were inconsistent with known facts.

Instead, despite knowing that there was no physical evidence tying Anthony to the murder and refusing to wait to see if the police could verify a single statement made in the "confession," Spies ordered Urban to arrest Anthony immediately.[11] Urban made the arrest "solely

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[10] *Id.* at 508.

[11] *Id.* at 508.

because [he] had been directed to by Miss Bornhorst [Spies]."[12] Anthony was then taken to jail, where he spent most of the next two years of his life. Despite the position now advanced in her petition to this Court, Spies testified during deposition that the decision to prosecute Anthony was not contemporaneous with Anthony's arrest; Spies did not decide to charge Anthony until the next day.

4. Spies's *Brady* Violations

As Spies prepared for trial, she knew Anthony would contend someone else killed Devan. There was good reason for Anthony to pursue this defense. Jamie Redmond, Lori Duniver's boyfriend, was a convicted felon and drug addict under court order to stay away from Devan because he had abducted Devan for three days a year earlier. Redmond continued to see Lori during the weekends when Devan went to visit her father. But Redmond was forced to return to Columbus on at least one occasion when Devan returned from a weekend visit earlier than expected.

On June 27, 1998, Devan was supposed to be with her father, but had again returned early to New Philadelphia. That same morning, Redmond told his other girlfriend in Columbus that he was going to visit

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[12] *Id.* at 510-11 ("Urban testified that he arrested Harris because Spies told him to, and that he had no input into the decision to make the arrest. As this testimony demonstrates, and as Spies does not deny, Spies went beyond merely advising the police; she *instructed* them to arrest Harris, without soliciting any officer's opinion.") (emphasis in original) (internal citation omitted).

a sick relative, a story the girlfriend found to be "very strange." When Columbus police found Redmond the next morning, driving a gold Acura, the police found children's playing cards in the back seat, which Redmond could not explain. Redmond told the police that he had been with a man named "Tom Smith," and he made no mention of "a sick relative." When the police spoke to "Tom Smith," he lied about his identity and provided the authorities with a false social security number.[13]

Spies had additional evidence regarding Redmond's whereabouts on June 27 that she purposely concealed at trial. Spies's handwritten notes state that Lori Duniver told police on June 27 that she had seen a "Gold Accura [sic]" driving "in the neighborhood" that day. On February 2, 1999, six days before trial, Duniver sent Spies a letter stating that "Officer Nelson will [ ] testify that I stated 'I had seen a car in the neighborhood on that day that resembled Jaimie [sic] Redmonds,'" but now claiming this was untrue. Duniver's letter further said: "Officer Nelson asked me if I knew the whereabouts of Jaimie and I reply, 'No. I hadn't had any contact with him since March of '98, and I said, I just know what kind of car he drives and I thought it was a Gold Accura. . . .'"

Spies presented both Duniver and Nelson as witnesses for the prosecution at trial – but neither mentioned the gold Acura. When asked about her June 27 discussion with Nelson, Duniver contradicted the letter she had just sent to Spies, testifying, "We filled

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[13] *Id.* at 507.

out a report, we really didn't discuss anything other than what was on the report." Because Spies failed to produce Duniver's letter as well as Spies' handwritten notes, Anthony was deprived of the opportunity to cross-examine Duniver on the vital issue of whether she had reported seeing Redmond's car in the neighborhood on June 27.

Spies also concealed documents from Columbus Children Services showing that Redmond had beaten Devan with a belt around the time he abducted her in 1997, and that Devan had reported being afraid of Redmond. Reflecting the importance she attached to this evidence, Spies wrote in her file "physical abuse (belt) prior to abduction" and, in all capital letters, "DEVAN AFRAID OF JAMIE." While suppressing this evidence of Devan's fear of Redmond, Spies asserted in her closing argument that "particular" weight should be given to hearsay allegations that Devan was afraid of Anthony.

On March 17, 1999, deprived of this *Brady* evidence, the juvenile court found Anthony guilty of murder and imposed the maximum sentence: incarceration until he turned twenty-one. Anthony did not learn of the evidence Spies withheld until 2005, when the district court granted his motion to compel the discovery of Spies's files.

5. Spies's Defamatory Press Conference

On June 7, 2000, the Ohio court of appeals reversed Anthony's conviction because his "confession" had been coerced in violation of his constitutional rights.[14] On June 8, 2000, Anthony was released from custody.

On the same day Anthony was released, Spies and her assistant prosecutor, David Hipp, held a press conference. With television cameras rolling, Spies declared: "In my heart and in my gut I feel Anthony Harris is responsible for the murder of Devan Duniver." Notwithstanding her public statements and the petitioners' baseless representation that there is "substantial circumstantial evidence" of Anthony's guilt,[15] Spies has never re-charged Anthony for Devan's murder.

6. Spies's Retaliatory Conduct

Anthony filed this action in August 2003, and five months later applied to enlist in the U.S. Marine Corps following his graduation from high school. Anthony disclosed the existence of his wrongful conviction to Marine Corps recruiter Gunnery Sergeant Mark Baker. Baker dispatched another recruiter, Sergeant William Brahen, to obtain a copy of Anthony's juvenile court file.

Brahen went to the Tuscarawas County prosecutor's office and asked the receptionist for Anthony's file.

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[14] *In re Harris*, 2000 WL 748087.

[15] Petition at 8.

Instead, he was confronted by Spies, who exclaimed, "You gotta be fucking kidding me."[16] Startled by Spies's hostility and lack of professionalism, Brahen asked Spies to speak with Baker on his cell phone. Spies took the phone and told Baker, "You know he's trying to sue us?" Spies told the Marines Anthony would "always" be a suspect, falsely representing "there was a written statement that he confessed to the murder," and "there are no other suspects."[17] When Baker explained that her statements could postpone Anthony's candidacy indefinitely, Spies responded, "That's right."

Spies never gave Anthony's records to Brahen. She never informed the recruiters that she had dismissed all charges against Anthony in the summer of 2000, that there was no evidence linking Anthony to the crime, or that there were several other viable suspects. As a result of Spies's conduct, Anthony's application to enlist in the Marines was rejected.[18]

B. Procedural History

On August 29, 2003, Anthony filed this action against Tuscarawas County and its chief prosecutor Amanda Spies, the City of New Philadelphia and its present and former police chiefs Jeffrey Urban and Thomas Staggers, and the Village of Millersburg and its police chief Thomas Vaughn. Anthony's claims against Spies

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[16] *Harris*, 513 F.3d at 508.

[17] *Id.* at 509.

[18] *Id.*

and Tuscarawas County included claims for violations of 42 U.S.C. § 1983 as well as for defamation, tortious interference with prospective business relationship, malicious prosecution, and First-Amendment retaliation.

The district court denied the defendants' motions for judgment on the pleadings. After thoroughly analyzing the interrogation transcript, the district court concluded that "Anthony's confession was coerced as a matter of law."

But after Anthony settled his claims against all defendants other than Spies and Tuscarawas County, the district court granted summary judgment to Spies and Tuscarawas County on all claims.[19] The district court found that Spies was entitled to qualified immunity. Anthony appealed, and the Sixth Circuit reversed, finding that Spies was entitled to neither absolute or qualified immunity for her conduct, and that genuine issues of fact existed as to almost all of Anthony's claims.

REASONS FOR DENYING THE PETITION

I. THE SIXTH CIRCUIT APPLIED WELL-SETTLED LAW TO THE FACTS OF THIS CASE.

None of the arguments in the petition meet the criteria set forth in Rule 10 of the Rules of this Court. The Sixth Circuit's decision does not advance legal theories that conflict with this Court's holdings or with the decisions of the other Courts of Appeal. Rather, the petition argues that the Sixth Circuit misapplied the

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[19] *Harris v. Bornhorst*, 2006 WL 1348155 (N.D. Ohio 2006).

law and made erroneous factual findings. This is not a proper basis to seek a writ of certiorari. And even if it were, the contentions set forth in the petition are wrong.

A. THE SIXTH CIRCUIT'S ABSOLUTE IMMUNITY HOLDING IS CONSISTENT WITH THIS COURT'S DECISIONS.

Spies denied being involved in the decision to arrest Anthony. But Officers Urban and Vaughn directly contradicted her deposition testimony. Urban testified that he arrested Anthony solely "because Spies told him to, and that he had no input into the decision to make the arrest."[20] And Vaughn testified that Spies ordered Anthony's arrest over his vehement objection.[21]

Spies claims that the district court and the Sixth Circuit erred in holding that she was not entitled to absolute immunity for her order demanding that the police arrest Anthony. But a prosecutor cannot hide behind absolute immunity for an act for which the police would receive only qualified immunity.[22]

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[20] *Harris*, 513 F.3d at 510.

[21] When confronted with Urban's and Vaughn's testimony, Spies waffled, stating "I don't recall making that decision one way or the other." *See id.* at 510 n.5.

[22] *Burns v. Reed*, 500 U.S. 478, 492-96 (1991). *See also Buckley v. Fitzsimmons*, 509 U.S. 259, 276 (1993) ("When the functions of prosecutors and detectives are the same, as they were here, the immunity that protects them is also the same.").

Spies argues that the Sixth Circuit improperly conflated her arrest order with her decision to prosecute. But in her deposition, Spies claimed that she did not make the decision to prosecute Anthony until *after* he was arrested:

> Q. Who made the decision to charge Anthony Harris with murder?
>
> A. I made the decision *after* Chief Urban determined that there was probable cause to arrest him, and then provided me with a report.
>
> * * *
>
> A. . . . Captain Urban made a probable cause determination that Anthony Harris should be arrested for the murder of Devan Duniver; and therefore, *based upon my subsequent conversations with him*, a complaint was prepared for him to sign and file in juvenile court.

Given that Spies herself testified that the decision to arrest was unrelated to and preceded her decision to prosecute Anthony, she cannot now claim error.

B. THE SIXTH CIRCUIT'S QUALIFIED IMMUNITY HOLDING IS CONSISTENT WITH THIS COURT'S DECISIONS.

Spies's argues that the Sixth Circuit erred in holding that she was not entitled to summary judgment based upon qualified immunity for ordering Anthony's arrest.[23] She contends that the appellate court failed to consider "whether the confession of Anthony Harris was so obviously constitutionally deficient that the prosecutor was unreasonable in her belief that it could be considered as a part of the probable cause analysis."[24]

But that is precisely what the Sixth Circuit held. Consistent with this Court's holding that probable cause must be based upon "reasonably trustworthy information,"[25] the Sixth Circuit held that the coerced confession of "a twelve-year-old child with no previous law-enforcement experience, outside the presence of his mother, through the use of intensive interrogation techniques," in which "Harris's attempts to give the

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[23] The portions of the petition relating to immunity relate only to Anthony's claims against Spies. Tuscarawas has no immunity. *Owen v. City of Independence*, 455 U.S. 622, 650 (1980).

[24] Petition at 12.

[25] *See Beck v. Ohio*, 379 U.S. 89, 91 (1964) (whether arrest supported by probable cause turns upon "whether at [the moment of the arrest] the facts and circumstances within [the arresting official's] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense").

answers demanded by Vaughn clearly demonstrated that Harris was unfamiliar with the details of the crime that the perpetrator would have known," was so untrustworthy that no arresting officer could reasonably have relied upon it to arrest Anthony:

> [A]ny reasonable prosecutor in Spies's position would have known, after listening to the tape of the confession, that it was involuntary as a matter of law and thus untrustworthy. First, as the Ohio appellate court held, any waiver of *Miranda* rights was rendered involuntary by Harris's age, lack of any previous criminal history or experience, and physical separation from his mother, in addition to the "intensity of the interview" conducted by Vaughn. More important, the techniques used by Vaughn in questioning a twelve-year-old child were coercive, irrespective of the effectiveness of the *Miranda* warning. In any event, Harris' attempts to give the answers demanded by Vaughn clearly demonstrated that Harris was unfamiliar with details of the crime that the perpetrator would have known.[26]

Spies claims that the Sixth Circuit erroneously applied an "actual probable cause" standard rather than an "arguable probable cause" standard. But the Sixth Circuit expressly applied this Court's decision in *Hunter v. Bryant*, 502 U.S. 224 (1991), holding that no reasonable officer in Spies's position could have

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[26] *Harris*, 513 F.3d at 512 (internal citations omitted).

mistakenly concluded that Anthony's statements to the police were reasonably trustworthy and thus supportive of probable cause.[27]

Setting aside the confession, the evidence supporting probable cause was extremely thin and in dispute, and genuine issues of fact existed as to what of this other allegedly inculpatory information, if any, Spies was aware of at the time she ordered Anthony's arrest.[28] Accordingly, the Sixth Circuit properly denied summary judgment to Spies on her qualified immunity defense.

C. SPIES WAS THE PROXIMATE CAUSE OF ANTHONY'S INJURIES.

Spies contends that she was not the proximate cause of Anthony's injuries because an Ohio juvenile court judge bound Anthony over for trial after a probable cause hearing. Even if such a principle were recognized by this Court,[29] the cases cited by Spies would have no

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[27] *Id.*

[28] *Id.* at 516.

[29] The cases relied on by Spies for the proposition that the state judge's decision "broke the chain of legal causation" appear to conflict with this Court's decision in *Malley v. Briggs*, wherein this Court found a similar argument to be "inconsistent with our interpretation of § 1983." 475 U.S. 335, 345 n.7 (1986). *See also Monroe v. Pape*, 365 U.S. 167, 187 (1961), (noting that § 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions"); *Buckley*, 509 U.S. 259 (reaching the merits of a prosecutor's immunity defense despite a grand jury's "intervening" indictment).

application here, because they require that an "independent intermediary" have access to all of the relevant information and that its decision not be tainted by the defendants' actions.[30]

Spies did not provide Anthony's counsel or the judge at probable cause hearing with a copy of the audiotape or transcript of the coerced "confession". And she failed to otherwise disclose the highly coercive and untrustworthy nature of Anthony's "confession", despite an obligation to do so. Rather, she presented a sanitized version of events – the highly misleading testimony of Urban that "[a]fter [Anthony] was advised of *Miranda* he explained to Mr. Vaughn after some questioning that he had been the one that stabbed Devan." Given the court's lack of information regarding the coerced "confession", its probable cause determination could not have constituted a superseding cause of Anthony's false arrest.

The juvenile court judge's adjudication of guilt is similarly tainted, because Spies withheld critical *Brady* information from the court. Spies does not dispute that she possessed material exculpatory evidence and failed to provide it to Anthony in violation of her *Brady* obligations.[31] Indeed, the Sixth Circuit, in the context

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[30] *See Shields v. Twiss*, 389 F.3d 142, 150 (5th Cir. 2004). Spies suggests that there is a split between the Sixth and Fifth Circuits on this point. Not true. The Sixth Circuit has specifically adopted the Fifth Circuit's reasoning. *See Powers v. Hamilton County Pub. Defender Comm'n*, 501 F.3d 592, 609 (6th Cir. 2007).

[31] Petition at 22-24.

of Anthony's malicious prosecution claim against Tuscarawas, found that Anthony established a prima facie case of fraud on the court by Spies.[32] Having withheld relevant, exculpatory information from the only "intermediary" that ever found Anthony guilty, Spies cannot now contend that she is not the proximate cause of Anthony's injuries.

D. ANTHONY'S AMENDED COMPLAINT MET THE NOTICE PLEADING STANDARD FOR ASSERTING A *BRADY* CLAIM.

Section 1983 claims are not subject to a heightened pleading standard. A plaintiff need only provide "a short and plain statement of the claim showing that the pleader is entitled to relief."[33] Anthony's allegation that the defendants manufactured his conviction by violating his rights under the Fifth and Fourteenth Amendments was sufficient to encompass the *Brady* violations later revealed during the course of the underlying proceedings. Petitioners offer no authority to suggest Anthony was required to do more at the pleading stage.

Moreover, during the course of the underlying proceedings, petitioners received ample notice that

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[32] *Harris* 513 F.3d at 521. Spies contends that "the Sixth Circuit completely ignores Ohio precedent in the case of *Vesey v. Connally*. . . ." *See* Petition at 17. Not so. The Sixth Circuit devoted three pages of its opinion to *Vesey* and its progeny but determined that the precedent did not bar Anthony's claims. *Harris*, 513 at 520-22.

[33] *Leatherman v. Tarrant County Narcotics and Intelligence Coordination Unit*, 507 U.S. 163, 164, 168 (1993); Fed. R. Civ. P. 8(a)(2).

Anthony was pursuing a *Brady* claim. During discovery, Anthony timely requested Spies's files, including any *Brady* material. Spies and Tuscarawas objected, representing that all *Brady* material had been fully disclosed in the juvenile proceeding.

That representation, as it turned out, was false. Under a court order compelling her compliance with this and other discovery requests, and after the pleading amendment deadline had passed, Spies finally produced her files. Despite the representations of her counsel, the files included *Brady* material that Spies had failed to provide to Anthony during the juvenile case. At a subsequent deposition, Anthony's counsel questioned Spies with specificity about those issues for several hours. Accordingly, as the Sixth Circuit held, "all parties were aware, well before the summary judgment stage, that [Anthony's] complaint encompassed a *Brady* claim."[34]

Tellingly, the petitioners do not contend that they were unaware that Anthony was pursuing a *Brady* claim. Nor do they allege any prejudice from Anthony's assertion of this claim. The Sixth Circuit did not err in allowing this claim to proceed.

E. THE SIXTH CIRCUIT PROPERLY DETERMINED THAT ANTHONY'S *BRADY* CLAIM SHOULD GO TO THE JURY.

Spies does not dispute that she knew that Lori Duniver told the police that she saw a gold Acura

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[34] *Harris* 513 F.3d at 517.

resembling her boyfriend Jamie Redmond's on the day Devan disappeared, and that Duniver later wrote a letter to Spies attempting to retract that statement just before Anthony's trial began. During deposition, Spies acknowledged she withheld all of this information from the defense, and she did not deny that Duniver – who Spies called as her first prosecution witness at Anthony's trial – gave incomplete and misleading testimony, making no reference to any of her statements regarding Redmond's gold Acura. Spies also elected to withhold Columbus Children's Services records showing Devan had been physically abused by, and was afraid of, Redmond.

Petitioners argue that Spies was not required to disclose this information because Anthony "was well aware of Jamie Redmond's existence and history."[35] This is not a basis to conceal *Brady* evidence. And Redmond's "existence and history" is precisely what made Redmond's whereabouts on the day Devan disappeared so critical to Anthony's defense.

Tuscarawas contends that it was entitled to summary judgment on the *Brady* claim because given Anthony's coerced confession, the trial court would have found him guilty even had it disclosed the exculpatory evidence. This reasoning wrongly justifies one constitutional violation based upon another constitutional violation.

The question under *Strickler v. Greene* is "not whether the defendant would more likely than not have

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[35] Petition at 23.

received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence."[36] Put another way, evidence is material if its suppression "undermines [] confidence in the outcome of the trial."[37] Given the coerced nature of Anthony's confession, the absence of forensic or other evidence tying Anthony to the crime, and credible evidence of the potential involvement of Redmond and others in Devan's murder, the Sixth Circuit properly determined that the *Brady* claim should go to the jury.

II. THIS PETITION DOES NOT CONTEST THE VAST MAJORITY OF THE CLAIMS ASSERTED AGAINST PETITIONERS.

While the petitioners ostensibly challenge in its entirety the Sixth Circuit's reversal of the district court's grant of summary judgment, in fact they do not raise issues with most of the Sixth Circuit's decision. Even if this Court reversed the Sixth Circuit's decision on the grounds set forth in the petition, this case would still proceed to trial on nearly every claim.

Spies does not take issue with the Sixth Circuit's determination that genuine issues of material fact exist as to Anthony's claims for First-Amendment retaliation, defamation, and tortious interference with prospective

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[36] 527 U.S. 263, 289-90 (1999).

[37] *Kyles v. Whitley*, 514 U.S. 419, 434 (1995) (quoting *United States v. Bagley*, 473 U.S. 667, 678 (1985)); *see also Strickler*, 527 U.S. at 301.

economic advantage, and malicious prosecution. And the § 1983 false arrest claim will proceed against Tuscarawas County even if it cannot be maintained against Spies by virtue of absolute or qualified immunity. Tuscarawas County has never disputed that Spies's actions as chief prosecutor of the county constitute county policy, making the county liable for Spies's actions even if she were shielded from the claim because of immunity.[38]

As only a fraction of the claims in this case could be affected by a ruling in favor of the petitioners before this Court, the Court should decline to hear this case.

CONCLUSION

For the reasons set forth herein, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[38] *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481, 485 (1986).